

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 12/20/2012

Action Requested By:
Engineering

Agenda Item Type
Resolution

Subject Matter:

License Agreement with The Secretary of the Army

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a License Agreement with The Secretary of the Army for the Lease of 35.28 acres of land on Redstone Arsenal for Zierdt Road Widening Improvements, Project No. STPHV-8507(600) & 65-06-RD01

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

This agreement is for a temporary construction easement along the east side of Zierdt Road and is necessary for the construction of Zierdt Road to a four lane roadway including roadway, drainage, utilities, Martin Road entrance to Gate 7, and relocated fences, starting generally 1,240 feet south of Martin Road and ending at I-565 southern right-of-way. No funds involved.

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: Kathy Martin

Date:

revised 3/12/2012

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: **Engineering**

Council Meeting Date: **12/20/2012**

Department Contact: **Lynn Majors**

Phone # **256-427-5201**

Contract or Agreement: **License Agreement**

Document Name: **Zierdt Road License Agreement, Project No. 65-06-RD01 &
STPHV-8507 (600)**

City Obligation Amount: **0**

Total Project Budget: **0**

Uncommitted Account Balance: **0**

Account Number: **N/A**

Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name:
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Department	Signature	Date
1) Originating	<i>[Signature]</i>	<i>12/10/12</i>
2) Legal	<i>[Signature]</i>	<i>12/12/12</i>
3) Finance	<i>[Signature]</i>	<i>12/13/12</i>
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

RESOLUTION NO. 12-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized to enter into a License Agreement by and between the City of Huntsville and The Secretary of the Army, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said License Agreement is substantially in words and figures as that certain document attached hereto and identified as "License Agreement between the City of Huntsville and The Secretary of the Army for a license for 35.28 acres of land for Zierdt Road Widening, PH I, Project No. STPHV-8507(600) & COH Project No. 65-06-RD01" consisting of six (6) pages plus three (3) additional pages consisting of Exhibit "A", and the date of December 20, 2012, appearing on the margin of the first page, together with the signature of the President of the City Council, and an executed copy of said document after being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 20th day of December, 2012.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 20th day of December, 2012.

Mayor of the City of Huntsville,
Alabama

NO. DACA01-3-13-1202
DEPARTMENT OF THE ARMY LICENSE
LOCATED ON REDSTONE ARSENAL
MADISON COUNTY, ALABAMA

THE SECRETARY OF THE ARMY, hereinafter referred to as the Secretary, under authority of the Secretary's General Administrative Powers, hereby grants to the CITY OF HUNTSVILLE, hereinafter referred to as the Grantee, whose address is Post Office Box 308, Huntsville, Alabama 35804, a license for 35.28 acres of land for a temporary work area for the Zierdt Road expansion, over, across, in and upon lands of the United States, as identified by Legal Description in Exhibit A and by Map in Exhibit B attached hereto and made a part hereof, hereinafter referred to as the Premises.

THIS LICENSE is granted subject to the following conditions.

1. TERM

This license is granted for a term of five (5) years beginning 1 January 2013 and ending 31 December 2017, but revocable at will by the Secretary.

2. CONSIDERATION

The consideration for this license shall be the construction, operation, and maintenance of the Premises for the benefit of the general public in accordance with the terms and conditions hereinafter set forth.

3. NOTICES

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the Grantee, to Director of City Engineering, City of Huntsville, Post Office Box 308, Huntsville, Alabama 35804-0308, and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, 109 Saint Joseph Street, Mobile, Alabama 36602, or as may from time to time otherwise be directed by the Parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", "Installation Commander", or "said officer" shall include their duly authorized representatives. Any reference to "Grantee" shall include any duly authorized representatives.

5. SUPERVISION BY THE INSTALLATION COMMANDER

The use and occupation of the Premises shall be subject to the general supervision and approval of the Installation Commander, Redstone Arsenal, hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

6. APPLICABLE LAWS AND REGULATIONS

The Grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the Premises are located.

7. CONDITIONAL USE BY GRANTEE

The exercise of the privileges herein granted shall be:

- a. without cost or expense to the United States;
- b. subject to the right of the United States to improve, use or maintain the Premises.
- c. subject to other outgrants of the United States on the Premises.
- d. personal to the Grantee, and this license, or any interest therein, may not be transferred or assigned.

8. CONDITION OF PREMISES

The Grantee acknowledges that it has inspected condition, and understands that the same is granted the Premises, knows its without any representations or warranties whatsoever and without any obligation on the part of the United States.

9. COST OF UTILITIES

The Grantee shall pay the cost, as determined by the officer having immediate supervision over the Premises, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the Grantee, including the Grantee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction.

10. PROTECTION OF PROPERTY

The Grantee shall keep the Premises in good order and in a clean, safe condition by and at the expense of the Grantee. The Grantee shall be responsible for any damage that may be caused to property of the United States by the activities of the Grantee under this license, and shall exercise due diligence in the protection of all property located on the Premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the Grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

11. RESTORATION

On or before the expiration of this license or its termination by the Grantee, the Grantee shall vacate the Premises, remove the property of the Grantee, and restore the Premises to a condition satisfactory to said officer. If, however, this license is revoked, the Grantee shall vacate the Premises, remove said property and restore the Premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Grantee shall fail or neglect to remove said property and restore the Premises, then, at the option of said officer, the property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States

or its officers or agents shall be created by or made on account of such removal and restoration work. The Grantee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this license in restoring the Premises.

12. NON-DISCRIMINATION

- a. The Grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national, origin or religion.
- b. The Grantee, by acceptance of this easement, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 USC § 2000d); the Age Discrimination Act of 1975 (42 USC § 6102); the Rehabilitation Act of 1973, as amended (29 USC § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directive 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Grantee, its agents, successors, transferees, and assignees.

13. TERMINATION

This license may be terminated by the Grantee at any time by giving the District Engineer at least ten (10) days notice in writing provided that no refund by the United States of any consideration previously paid shall be made and provided further, that in the event that said notice is not given at least ten (10) days prior to the rental due date, the Grantee shall be required to pay the consideration for the period shown in the Condition on CONSIDERATION.

14. REMEDIAL ACTION.

The Redstone Arsenal (RSA) Garrison Installation Restoration Program, in conjunction with the Environmental Protection Agency and the Alabama Department of Environmental Management, has implemented enforceable land use controls for the use of Installation-wide Groundwater. RSA's Installation-wide Groundwater Interim Record of Decision prohibits the use of groundwater for drinking water purposes. Any intrusive activities that may expose works to groundwater (including seeps and springs) must be reviewed by the Installation Restoration Branch in the Department of Public Works (DPW) through the DPW Job Order request procedures. Installation of wells is not permitted without the review and approval from the RSA Garrison Installation Restoration Branch.

15. ENVIRONMENTAL PROTECTION

- a. Within the limits of their respective legal powers, the parties to this license shall protect the Premises against pollution of its air, ground and water. The Grantee shall comply with any laws, regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the Premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this license. The Grantee shall not discharge waste

or effluent from the Premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

- b. The Grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the Grantee's activities, the Grantee shall be liable to restore the damaged resources.
- c. The Grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the Premises.

16. HISTORIC PRESERVATION

The Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the Premises, the Grantee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

17. DISCLAIMER

This license is effective only insofar as the rights of the United States in the Premises are concerned; and the Grantee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the Premises. It is understood that the granting of this license does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

THIS LICENSE is not subject to Title 10 United States Code Section 2662, as amended.

IN WITNESS WHEREOF I have hereunto set my hand by the authority and direction of the Secretary of the Army this _____ day of _____ 20____.

Willie L. Patterson III Ed.D.
District Chief Real Estate
Real Estate Contracting Officer
US Army Engineer District, Mobile

ACKNOWLEDGMENT

STATE OF ALABAMA
COUNTY OF MOBILE

On this _____ day of _____, 20____, before me the undersigned Notary Public, personally appeared _____, known to me to be the person described in the foregoing instrument, who acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My Commission Expires:

Prepared by Emily Shouppe, 251-490-0472, emily.e.shouppe@usace.army.mil

THIS LICENSE is also executed by the Grantee in witness whereof this _____ day of _____ 20 ____.

Tommy Battle
Mayor
City of Huntsville

ACKNOWLEDGMENT

STATE OF ALABAMA
COUNTY OF MADISON

On this _____ day of _____, 20____, before me the undersigned Notary Public, personally appeared _____, known to me to be the person described in the foregoing instrument, who acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My Commission Expires:

Exhibit A

STATE OF ALABAMA
MADISON COUNTY

Surveyors Description

Reference Drawing #1 - Redstone Arsenal

A tract or parcel of land lying and being in Sections 14, 23, 26 & 35, Township 4 South, Range 2 West of the Huntsville Meridian, Madison County, Alabama, and being more particularly described as follows:

Commencing at a concrete monument stamped "U.S. 48" found at the Southwest corner of Section 35, Township 4 South, Range 2 West of the Huntsville Meridian; Thence North 01 Degrees 14 Minutes 06 Seconds East, along the West line of said Section 35, 1041.92 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence South 88 Degrees 45 Minutes 51 Seconds East, leaving said West line, a distance of 94.96 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set on the proposed East Right-of-Way Easement for Zierdt Road and the Point of Beginning having established coordinates of Northing 1508564.59, Easting, 390306.09 of zone east of the Alabama State Plane Coordinate System.

Thence along said proposed Right-of-Way Easement North 01 Degrees 14 Minutes 09 Seconds East, a distance of 877.69 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence North 47 Degrees 47 Minutes 22 Seconds East, a distance of 68.77 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence North 01 Degrees 14 Minutes 09 Seconds East, a distance of 115.57 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence North 42 Degrees 12 Minutes 39 Seconds West, a distance of 72.40 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence North 01 Degrees 13 Minutes 12 Seconds East, a distance of 525.35 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence North 01 Degrees 14 Minutes 10 Seconds East, a distance of 2660.50 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence North 02 Degrees 17 Minutes 18 Seconds East, a distance of 2653.43 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence North 02 Degrees 17 Minutes 19 Seconds East, a distance of 2653.99 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence North 02 Degrees 17 Minutes 49 Seconds East, a distance of 1510.09 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence North 12 Degrees 07 Minutes 41 Seconds East, a distance of 864.19 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence North 02 Degrees 17 Minutes 49 Seconds East, a distance of 209.46 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence North 07 Degrees 32 Minutes 03 Seconds West, a distance of 864.21 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence North 02 Degrees 14 Minutes 00 Seconds East, a distance of 1926.84 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set; Thence North 01 Degrees 59 Minutes 02 Seconds East, a distance of 1842.29 feet to a #5 rebar with a cap stamped "GARVER ENG. CA#445" set at intersection of said proposed Right-of-Way Easement and the South Right-of-Way of Interstate 565; Thence leaving said proposed Right-of-Way Easement North 60 Degrees 08 Minutes 53 Seconds East, along said South Right-of-Way, a distance of 82.40 feet to a point on a proposed Temporary Construction Easement; Thence along said proposed easement South

Exhibit A

01 Degrees 59 Minutes 02 Seconds West, leaving said proposed Right-of-Way Easement, a distance of 1885.90 feet; Thence South 02 Degrees 14 Minutes 00 Seconds West, a distance of 1921.01 feet; Thence South 07 Degrees 32 Minutes 03 Seconds East, a distance of 864.25 feet; Thence South 02 Degrees 17 Minutes 49 Seconds West, a distance of 221.50 feet; Thence South 12 Degrees 07 Minutes 41 Seconds West, a distance of 864.19 feet; Thence South 02 Degrees 17 Minutes 49 Seconds West, a distance of 1504.06 feet; Thence South 02 Degrees 17 Minutes 19 Seconds West, a distance of 2653.99 feet; Thence South 02 Degrees 17 Minutes 18 Seconds West, a distance of 2652.78 feet; Thence South 01 Degrees 14 Minutes 10 Seconds West, a distance of 2659.84 feet; thence South 01 Degrees 13 Minutes 12 Seconds West a distance of 497.46 feet; thence South 42 Degrees 12 Minutes 39 Seconds East a distance of 12.24 feet; thence South 81 Degrees 51 Minutes 37 Seconds East a distance of 430.57 feet; thence along an arc 566.18 feet to the right, having a radius of 4140.00 feet, the chord of which is South 77 Degrees 56 Minutes 33 Seconds East for a distance of 565.74 feet; thence South 79 Degrees 55 Minutes 53 Seconds East a distance of 265.93 feet; thence along an arc 59.61 feet to the left, having a radius of 684.00 feet, the chord of which is South 82 Degrees 25 Minutes 41 Seconds East for a distance of 59.59 feet; thence South 15 Degrees 46 Minutes 45 Seconds West a distance of 314.94 feet; thence North 74 Degrees 13 Minutes 15 Seconds West a distance of 337.76 feet; thence along an arc 514.67 feet to the left, having a radius of 3860.00 feet, the chord of which is North 78 Degrees 02 Minutes 26 Seconds West for a distance of 514.29 feet; thence North 81 Degrees 51 Minutes 37 Seconds West a distance of 405.28 feet; thence South 1 Degrees 14 Minutes 09 Seconds West a distance of 831.12 feet; thence North 88 Degrees 45 Minutes 51 Seconds West a distance of 70.00 feet to the Point of Beginning.

The above described tract contains 35.28 acres (1536720.53 sq. ft.)

